IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 168 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PARIKH ENTERPRISES PVT LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 168 of 1988
MR SN DIVETIA for Petitioner No. 1
MR BB NAIK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 05/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the assessee, the following question of law is referred for the opinion of this Court:-

"Whether on the facts and circumstances of the case, the Tribunal was justified in confirming the disallowance of interest of Rs.20,838/- in respect of Unit No.I, u/s.40A(8) of the Act?"

2. The assessment year involved is assessment year 1982-83. The Income-tax Officer has disallowed the interest under Section 40 A(8) of the Act. Being aggrieved by the said decision, the assessee has preferred an appeal before the CIT (Appeals) who has confirmed the said disallowance and the assessee has preferred the second appeal against the order of CIT (Appeals) confirming the disallowance of interest made by the Income-tax Officer.

3. Heard Mr SN Divetia learned advocate appearing for the assessee and Mr BB Naik learned Standing Counsel appearing for the respondent.

4. At the time of hearing of this Reference, our attention is drawn to the decision of this Court in the case of CIT vs. Navjivan Roller and Pules Mills, (2001) 251 ITR 661 wherein this Court has discussed in detail the provisions contained in Section 40 A(8) of the Act and has also considered the decisions of Bombay, Madras and Madhya Pradesh High Courts. While agreeing with the view of Bombay and Madras High Courts and dissenting from the view taken by the Madhya Pradesh High Court, this Court has held that any interest paid on any money received by the Company other than a banking company or a financial company which does not fall in any of the exceptions contained in clauses (i) to (viii) of Explanation (b) to Section 40 A(8) and its deduction, which is an allowable expenditure, is governed by Section 40 A(8) during its operation.

5. Since the issue raised in the present reference is squarely covered by the decision of this Court in the above case, we are of the view that the Tribunal was justified in confirming the disallowance of interest of Rs.20,838/- under Section 40 A(8)_ of the Act in respect of Unit No.I.

We, therefore, answer this question in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-